

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 284 OF 2007

Nitin Pandurang Dhotre ..Applicant
V/s
The State of Maharashtra ..respondent.

Mr. Sidharth Kamble, Advocate for the applicant.
Ms. R.M.Gadhvi, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 5TH FEBRUARY, 2007.

P.C.

. Heard Mr.Kamble, learned Counsel for the applicant and Ms. Gadhvi, learned APP for the State. The applicant seeks to be released on bail for the offence punishable under Section 498A, 406, 312 r/w section 34 of Indian Penal Code.

2. It appears that prosecutrix Geeta is second wife of the present applicant. Applicant was already married and living with his first wife and a child. The prosecutrix is the police constable. It appears that she also married the applicant. However, the applicant did not like her to have a child. Therefore, as and when she become pregenant the applicant use to ill-treat

her and she aborted. Initially on a report lodged by her, offence was registered under Section 498A, 406, 352 r/w section 34 of Indian Penal Code at Manikpur Police Station, Vasai. In that matter present applicant and accused were granted bail. On two occasions accused remained absent and therefore, warrant was issued against the present applicant and other accused and they were arrested. Other accused were granted bail but the present applicant was refused bail by the learned Additional Sessions Judge. Therefore, he has come to this Court for seeking bail.

3. The prosecutrix is the police constable and knowingly she married the present applicant, who was already married and having a child. Even though she lodged report in November 2005, it appears that police invoked section 313 of Indian Penal Code for the first time in 2007. The application filed by the present applicant for bail was rejected by the Additional Sessions Judge, Palghar, mainly on the ground that the offence under Section 313 is punishable with imprisonment for life. In fact, Section 313 IPC for causing miscarriage without woman's consent is punishable with imprisonment for life or the

imprisonment of either description for a term which may extend to 10 years. The offence is triable by the Court of Sessions. But if the FIR is read it does not reveal that the accused forcibly caused miscarriage without the consent of the woman. Taking into consideration the circumstances, I find that it is a fit case to grant bail.

4. The applicant is hereby granted bail in the sum of Rs.25,000/- with surety in like amount with condition that he shall not tamper with prosecution evidence.

(J.H. BHATIA, J.)